



Form IL-8857 Instructions

General Information

What is innocent spouse relief?

Innocent spouse relief is a means of reducing an innocent spouse's income tax liability resulting from a joint return. Generally, when you file a joint return, both you and your spouse are responsible for any tax liability, penalties, and interest that may be due or become due for that tax year. This means that you may be held responsible for the tax due on your spouse's income or for taxes, penalties, and interest due as the result of your spouse's error.

However, if you are granted innocent spouse relief, you are not liable for the tax on your spouse's income that was reported on your joint return. Also, you are not liable for the tax, penalties, and interest that are due on income your spouse did not report or that results from deductions or credits that were overstated by your spouse, unless you knew of the erroneous reporting of those items.

What is the purpose of this form?

The purpose of Form IL-8857, Request for Innocent Spouse Relief, is to request a release from a joint tax liability that you believe is the sole responsibility of the person with whom you filed the return. The Allocation of Liability Worksheet will help you determine your separate liability and your share of any payments that have already been made.

You must complete a separate Form IL-8857 and an Allocation of Liability Worksheet for each year you are seeking innocent spouse relief. If you are granted innocent spouse relief, the worksheet will determine the amount of refund that you may be entitled to or the amount of your remaining liability.

Note: You must have filed a joint return for the year that you are requesting a release from tax liability in order to receive innocent spouse relief.

Is there anything special I should know?

Yes, you should know that Illinois legislature passed a new law on **August 13, 1999**, which states that an innocent spouse is responsible only for the amount of liability that would have been shown on that spouse's separate return for the same tax year. Therefore, if you filed or were assessed

- after August 13, 1999, or
- before August 13, 1999, but your liability from a previous filing was not paid as of August 13, 1999,

you will be responsible for the amount of tax liability claimed on a separate return for the same tax year that shows only your income and deductions. The Allocation of Liability Worksheet will help you determine this amount.

If you filed and paid before August 13, 1999, Illinois grants innocent spouse relief according to the federal guidelines. You will be released from any Illinois tax, penalties, interest, or other amounts in the same manner that you received a release from the federal government.

Under the old guidelines, if you did not have an innocent spouse issue for federal income tax purposes, you will be released of any Illinois tax, penalties, interest, or other amounts if

- you filed a joint return; and
- the difference between the total amount of tax that should have been shown and the amount of tax that was actually shown was

greater than \$500 and this difference resulted from an omission by the person you were married to at the time the return was filed; and

- you did not know of this difference at the time you signed this return.

Will collection activity stop?

Once we receive your completed Form IL-8857, collection activity against the person requesting innocent spouse relief will stop during our review for the tax year identified on this form. However, we may continue with investigation, adjustment, and collection of all joint tax liabilities other than the tax year identified on this form.

What must I attach to Form IL-8857?

You must attach

- a copy of your federal and Illinois Income Tax returns for the year,
- any amended federal or Illinois Income Tax returns, and
- any final determinations of federal or Illinois Income Tax liability that you have received from the Internal Revenue Service (IRS), the Illinois Department of Revenue, or the courts.

If you do not have a copy of any of the federal documents mentioned above, you must complete the IRS Form 4506, Request for Copy or Transcript of Tax Form, and send to the IRS. Once you receive these documents, attach to your Form IL-8857 and forward to us.

Where do I mail this form?

You should mail this form and any required attachments to:

ILLINOIS DEPARTMENT OF REVENUE
PROBLEMS RESOLUTION DIVISION
PO BOX 19014
SPRINGFIELD IL 62794-9014

What if I need assistance?

If you need assistance,

- visit our Web site at **www.ILtax.com**;
- call our Taxpayer Assistance Division at **1 800 732-8866** or **217 782-3336**;
- call our TDD (telecommunications device for the deaf) at **1 800 544-5304**; or
- write to us at the Illinois Department of Revenue, P.O. Box 19044, Springfield, Illinois 62794-9044

What if I need additional forms or schedules?

If you need additional forms or schedules,

- visit our Web site at **www.ILtax.com**;
- call our 24-hour Forms Order Line at **1 800 356-6302**;
- call our Illinois Tax Fax at **217 785-3400**; or
- write to us at the Illinois Department of Revenue, P.O. Box 19010, Springfield, Illinois 62794-9010.

Step-By-Step Instructions

Step 1: Provide the following information

Lines 1 through 4 – Write the information requested on the form.

Line 5 – Write the tax year that you are requesting innocent spouse relief.

Step 2: Provide the following information about the person to whom you were married

Lines 6 through 11 – Write the information requested on the form regarding the spouse with whom you filed the joint return.

Step 3: Answer the following questions

Line 12 – Check the appropriate box. If you filed a federal Form 8857, you must attach a copy of that form. You must also include any pertinent documentation used in the review and the determination of your request with the IRS. Also include a copy of any determination that you received from the IRS stating your request was either granted or denied.

Line 13 – Check the appropriate box. If “yes”, attach a complete explanation of each transfer.

Line 14 – Check the appropriate boxes.

If your request is for a tax year

- after August 13, 1999, your innocent spouse tax relief will be governed according to Illinois law established as of that date.
- before August 13, 1999, and your tax liability was **not** paid as of that date, your innocent spouse tax relief will be governed according to Illinois law established as of August 13, 1999.
- before August 13, 1999, and that liability was paid by that date, your innocent spouse tax relief will be governed according to IRC Section 6013(e), which was in effect in years prior to 1998.

Lines 15 and 16 – Check the appropriate boxes. If you answered “yes” to either of these questions, you must complete the **Correction of erroneous item** section of the Allocation of Liability Worksheet, Lines 50 through 54.

Step 4: Explain your request for innocent spouse relief

Line 17 – In order for us to properly review your request, you must explain in detail why you believe you are not responsible for the tax liability for the tax year that you have identified on this form. If more room is needed, be sure to attach an additional sheet.

Step 5: Complete the worksheet

Line 18 – Complete the “Allocation of Liability Worksheet” for the tax year that you are requesting innocent spouse relief. See “What if I need additional forms or schedules?” on Page 1.

18a – If “Yes,” write the amount from your federal return on the appropriate lines. If “No,” write the amounts on Lines 1 through 25 as finally determined by the IRS or the courts.

18b – If “Yes,” write the amount from your Illinois return on the appropriate lines. If you checked the “No,” write the amounts on Lines 28 through 36 as determined by the department or the courts.

How to allocate items of income, deductions, payments, and credits

In general, an item of income, deduction, payment, or credit is allocated to the spouse who earned the item or made the payments. However,

- If the IRS or a federal court has made a determination regarding the allocation of any item of income, expense, or exemption between you and your spouse in an innocent spouse proceeding,

the amounts shown in the Columns B and C must follow that allocation.

- If you cannot determine whether you or your spouse is entitled to an item of income, expense, or exemption, divide that item equally by claiming half in Column B and half in Column C.
- If you and your spouse did not file an income tax return before the IRS assessed a federal income tax liability, the entire amount of any item of income in Column A is allocated to each spouse that had knowledge of that income.

For example: If the wife was filing for innocent spouse relief and the husband earned \$1,000 in business income, no return was filed before the IRS assessed the liability, and the wife knew of that income, the \$1,000 must be included in both Column B and Column C of Line 6, even if the income would be attributed entirely to the husband under the normal rules. Any deduction associated with that income must also be included in both Column B and Column C. If the wife did not know of the income, the income and associated deductions would be included in the husband's column only.

- If you and your spouse did not file an income tax return before the department assessed an Illinois Income Tax liability, the entire amount of any item of income in Column A is allocated to each spouse that had knowledge of that income.

For example: If the husband earned \$1,000 in municipal bond interest exempt from federal income tax, no return was filed before the department assessed the liability, and the wife knew of the interest, that \$1,000 must be included in Line 26 of both Column B and Column C. Any subtractions allowed for expenses, which could not be deducted in computing federal adjusted gross income, would also be included in both columns.

If the wife had no actual knowledge of the interest, the interest and related subtractions would be included in the husband's column only.

Allocate income items

Lines 1 through 15

Column A – If you filed a federal return, complete this column by writing the income amounts you and your spouse actually used to file your federal Form 1040, Form 1040A, or Form 1040EZ. If you did not file a federal return, write the amounts as determined by the Internal Revenue Service or the courts.

Columns B and C – Complete Column B using the amounts actually earned by the husband. Complete Column C using the amounts actually earned by the wife.

Line 16 – Add Lines 1 through 15. Write the total of each column.

Allocate deduction items

Lines 17 through 23

Column A: Complete this column using the deduction amounts you and your spouse actually used to file your federal Form 1040, Form 1040A, or Form 1040EZ. If you did not file a federal return, write the amounts as determined by the Internal Revenue Service or the courts.

Columns B and C: Complete Column B using the amounts actually incurred by the husband. Complete Column C using the amounts actually incurred by the wife.

Line 24 – Add Lines 17 through 23. Write the total of each column.

Line 25 – Subtract Line 24 from Line 16. Write the result in each column.

Allocate Illinois additions, subtractions, and income

If a subtraction is allowed on an item of income that is subject to federal income tax but not Illinois income tax, that subtraction must be allocated in the same manner as the income is allocated.

Lines 26 and 27

Column A: If you filed an Illinois return, complete these lines using the amounts you and your spouse actually used when filing a joint Form IL-1040, Illinois Individual Income Tax Return. If you did not file an Illinois return, write the amounts determined by the department or the courts.

Columns B and C: Complete Column B using the amounts allocated to the husband. Complete Column C using the amounts allocated to the wife.

Line 28 – Add Lines 25, 26, and 27. Write the total of each column.

Lines 29 through 33

Column A: If you filed an Illinois return, complete these lines using the amounts you and your spouse actually used when filing a joint Form IL-1040. If you did not file an Illinois return, write the amounts determined by the department or the courts.

Columns B and C: Complete Column B using the amounts allocated to the husband. Complete Column C using the amounts allocated to the wife.

Line 34 – Add Lines 29 through 33. Write the total in each column.

Line 35 – Subtract Line 34 from Line 28

Line 36 – Allocate your income to Illinois as follows:

Column A: Residents – Write the amount from Line 35.

Nonresidents and part-year residents – Write in Column A the amount of base income reported on Line 35 that you allocated or apportioned to Illinois on your original Schedule NR, Nonresident and Part-Year Resident Computation of Illinois Tax.

Columns B and C: Residents – Write the amount from Line 35, Columns B and C on Line 36, Columns B and C.

Nonresidents and part-year residents – Complete Column B using the amount of base income that is allocated to the husband. Complete Column C using the amount of base income that is allocated to the wife.

Note: Use a separate Schedule NR as a worksheet for making this allocation for each spouse, and attach a copy of each Schedule NR.

Line 37 – Write the amounts from Line 36 for all columns here.

Allocate Illinois exemptions and tax

Line 38 – Allocate your Illinois exemption allowance as follows:

Column A: Residents – Complete Column A using the exemption allowance you and your spouse were allowed when filing a joint Form IL-1040.

Nonresidents and part-year residents – Complete Column A using the exemption allowance you and your spouse were allowed on your original Schedule NR.

Columns B and C: Residents – Complete Column B using the exemption allowance allowed to the husband. Complete Column C using the exemption allowance allowed to the wife.

Nonresidents and part-year residents – Complete Columns B and C by determining the amount of exemptions allowance for each spouse by referring to the Schedule NR worksheet used for Line 36.

Line 39 – Subtract Line 38 from Line 37 in all columns. This is the amount of your Illinois net income. This amount cannot be less than zero. If less than zero or negative, write zero.

Line 40 – Multiply Line 39 in each column by 3 percent (.03) and write the result.

Allocate Illinois credits

Lines 41 through 45

Column A: If you filed an Illinois return, complete this column using the credit amounts you and your spouse actually used to file your joint Form IL-1040. If you did not file an Illinois return, write the amounts determined by the department or the courts.

Columns B and C: Complete Column B using the amount of each credit item that is allocable to the husband. Complete Column C using the amount of each credit item that is allocable to the wife.

Note: The credit items must be allocated in the same manner as the related item of income or expense is allocated in Lines 1 through 15, Allocation of income items, and Lines 17 through 23, Allocation of deduction items.

For example: If the income and deductions from a partnership are allocated to the wife, a credit earned by the partnership must also be allocated to the wife.

In the absence of evidence of whether an item should be allocated to the husband or the wife, that item should be divided equally between both spouses.

Line 46 – Add Lines 41 through 45. Write the total in each column.

Line 47 – Subtract Line 46 from Line 40. Write the result in each column. This is your net tax. This amount cannot be less than zero. If less than zero or negative, write zero.

Line 48

Column A: Complete this line by writing the amount of voluntary contributions you designated on your joint Form IL-1040.

Columns B and C: Allocate the proper contributions to Columns B and C. In the absence of evidence as to which spouse should be allowed which contribution, divide the contribution equally between both spouses.

Line 49 – Subtract Line 48 from Line 47. This is your total liability. Write the amount of each column.

Correction of erroneous items

Use this section to report and allocate any corrections to erroneous items on the federal or Illinois return that you originally filed. This is for returns filed before any tax was assessed by the IRS or the department.

An erroneous item is an amount of income omitted from a return or an amount of deduction or credit claimed in error.

Do not include any items of income, deduction, or credit required to be shown on a federal income tax return if you did not file a federal income tax return before the IRS assessed your tax. You should report and allocate these items on Lines 1 through 25 because all items of income and deduction would be considered erroneous items.

Do not include any Illinois subtractions or credits if you did not file an Illinois Income Tax return before the department assessed your tax. You should report and allocate these items on Lines 29 through 33 and Lines 41 through 45 because all items of income and deduction would be considered erroneous items.

Note: In computing the separate tax liabilities of spouses when one has requested innocent spouse relief, an erroneous item is allocated to each spouse who had knowledge of that item.

For example: If a husband earned \$1,000 in municipal bond interest exempt from federal income tax, this amount was not reported as an addition on the Illinois return, and the wife knew of the interest, that \$1,000 must be included in both the husband and the wife's columns of Line 50.

Any subtraction allowed for expenses, which could not be deducted in figuring federal adjusted gross income because they were incurred in connection with earning exempt interest income, would also be included in both Columns B and C. If wife had no actual knowledge of the interest, the interest and related subtraction would be included in the husband column only.

If you checked the "No" boxes in Step 5, Line 16 a and b, write zero in each column of Lines 50 through 55.

Line 50

Be sure to write the correction of each item of erroneous income or deductions on a separate line on Page 4 and identify each adjustment. Write corrections that decrease income as negative amounts. Attach additional sheets if necessary.

Column A: Complete this column correcting any erroneous amount of income or deduction you and your spouse omitted on your original joint federal or Illinois return.

Column B and C: Complete Columns B and C correcting any erroneous amount of income or deduction that was omitted on your original joint federal or Illinois return that was allocable to a spouse or that the spouse was aware of at the time of reporting.

Line 51

Column A: Complete this column correcting any exemption allowance you and your spouse erroneously claimed on your original joint federal or Illinois return. Write corrections that decrease the exemption allowance as a negative number.

Column B and C: Complete Columns B and C correcting any exemption allowance that was erroneously claimed on your original joint federal or Illinois return and that you were aware of at the time of reporting.

Line 52 – Add Lines 50 and 51.

Line 53 – Multiply Line 52 by 3% (.03).

Line 54

Column A: Complete this column correcting any credit amount you and your spouse erroneously claimed on your original joint federal or Illinois return. Write corrections that decrease the credits as a negative number.

Column B and C: Complete Columns B and C correcting any credit amount that was erroneously claimed on your original joint federal or Illinois return and that you were aware of at the time of reporting.

Note: Be sure to include any increase in credit allowed as the result of an increase in your joint tax liability resulting from the correction of an erroneous item.

Line 55 – Add Lines 53 and 54. This is the total amount of corrections to your tax.

Penalties

Lines 56 a through d

Column A: Complete this column using the amounts of any penalties assessed on the jointly filed Illinois Income Tax return.

Columns B and C: Complete Column B identifying the penalties attributable to the husband. Complete Column C identifying the penalties attributable to the wife.

Note: In the absence of evidence as to whom a penalty should be allocated, multiply that penalty times a fraction equal to the amount on Lines 49 plus 55 for that spouse divided by the sum of the amounts for both spouses on Lines 49 plus 55.

Line 57 – Add Lines 56 a through d. This is the amount of your total penalties. Write the total in each column.

Line 58 – Add Lines 49, 55, and 57. Write the total in each column.

Payments made

Line 59

Column A: Complete this column using the total amount of withholding you and your spouse claimed on your original joint federal and Illinois return.

Columns B and C: Complete Column B using the amounts actually withheld from the income of the husband. Complete Column C using the amounts actually withheld from the income of the wife.

Lines 60 through 62

You should include any amount treated as a payment toward your Illinois Income Tax liability including overpayments for other years credited against this year's liability, federal income tax refunds offset against this liability, and any amount collected by levy or foreclosure.

Column A: Complete this column using the total amount of payments you and your spouse paid on your original return and include all payments made through the date of filing this request.

Columns B and C: Complete Column B using the amounts actually paid by the husband. Complete Column C using the amounts actually paid by the wife.

Note: If you do not know which spouse should receive credit for a payment, apportion the payment by multiplying the payment amount by a fraction equal to the net liability of the spouse shown on Line 58 divided by the sum of the net liabilities of the spouses on Line 58.

Line 63 – Add Lines 59 through 62. This is your total payments. Write the total in each column.

Line 64

Column A: Complete this column using the total amount of any refund you and your spouse received from your original filing. Include any overpayment reported for this year that was applied against any other liability for another year, rather than refunded to you. Also include any overpayment applied against your estimated tax liability for a subsequent year.

Columns B and C: Complete Column B using the refund amount attributable to the husband's tax liability. Complete Column C using the refund amount attributable to the wife's tax liability.

Line 65 – Subtract Line 64 from Line 63. This is your net payments. Write the result in each column.

Net overpayment or underpayment

Line 66

Subtract Line 65 from Line 58. This is your net overpayment or underpayment. If the amount is negative, write this amount in brackets.

Line 67 – Add Lines 54 and 56. This is your net overpayment or underpayment from erroneous items. If the amount is negative, write this amount in brackets.

Line 68 – Compare Lines 66 and 67.

If both Lines 66 and 67 show an underpayment allocable to the spouse requesting relief, that spouse shall be liable only for the larger of those two amounts.

If both Lines 65 and 66 show an overpayment allocable to the spouse requesting relief, that spouse shall be entitled to a refund of the smaller of those two amounts, to the extent allowed under the statute of limitations in Illinois Income Tax Act, Section 911.

If one of Lines 65 and 66 show an overpayment allocable to the spouse requesting relief and the other shows an underpayment, and:

- the overpayment exceeds the underpayment, the spouse shall be entitled to a refund of the excess of the amount of the overpayment over the amount of underpayment, to the extent allowed under the statute of limitations in IITA, Section 911.
- the underpayment exceeds the overpayment, the spouse shall be liable only for the excess of the amount of the underpayment over the amount of the overpayment.

Note: These computations do not include interest. If you paid some of your liability after it was due, an overpayment shown on this line will be reduced or even eliminated by interest on the late payment. The proper amount of interest will be figured on any amount you owe us or on any refund we owe you after the overpayment or underpayment is determined.